



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 16, 1997

Mr. J. Greg Hudson  
Bickerstaff, Heath, Smiley, Pollan,  
Kever & McDaniel, L.L.P.  
1700 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR97-2759

Dear Mr. Hudson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110834.

The Collin County Sheriff's Department (the "department"), which you represent, received a request for a variety of information contained in the personnel files of the Sheriff and two Sheriff's Deputies. You state that the majority of the information is public and will be released to the requestor. You assert, however, that certain responsive information is excepted from disclosure pursuant to sections 552.101, 552.102 and 552.117 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together.

The information submitted to this office contains some personal financial information that is excepted from disclosure under sections 552.101 and 552.102 in conjunction with the common-law right to privacy. This office has determined that some personal financial information is highly intimate or embarrassing, and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 545 (1990), 523 (1989). In Open Records Decision No. 373 (1983) at 3, we stated:

In our opinion, all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, the fact that an employee participates in a group insurance plan funded by the county or state is not information that is excepted from disclosure. Open Records Decision No. 600 (1992) at 9. Financial information relating to retirement benefits must be disclosed if it reflects an employee's mandatory contributions to a county or state retirement system. *Id.* at 9-10. On the other hand, information is excepted from disclosure if it relates to a voluntary investment that an employee made in an optional benefits plan offered by the county or state. *Id.* In addition, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy, as is information revealing an employee's designation of beneficiaries of insurance and retirement funds. *Id.* at 10-11. Finally, financial information of a purely personal nature, such as information relating to mortgage loans and bank accounts, is protected by common law privacy, *Id.* at 11-12, as are credit card numbers, Open Records Decision No. 373 (1983), and such information must be withheld from disclosure.

You also contend that some of the submitted documents are excepted from disclosure under section 552.101 in conjunction with confidentiality statutes. Section 5.08(b) of the Medical Practice Act (the "MPA"), article 4495b, V.T.C.S., provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

We have marked the documents in the information submitted that appear to be medical records. (See green tags).<sup>1</sup> These medical records may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). See V.T.C.S. art. 4495b, §§ 5.08(c), (j).

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<sup>1</sup>The information we have marked is contained in Exhibits B and D.

Section 611.002 of the Health and Safety Code provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

We have marked information that is a confidential mental health record. This information may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. (See blue tag).

The submitted information contains W-4 income tax forms. These forms constitute tax return information that is confidential pursuant to federal law. 26 U.S.C. § 6103; *see also* Open Records Decision No. 600 (1992) at 8-9. The department must withhold the W-4 forms contained in the submitted materials under section 552.101.

We note the submitted documents also contain criminal history information, which you must withhold from disclosure pursuant to section 552.101 of the Government Code. Criminal history information obtained from the National Crime Information Center or the Texas Crime Information Center is generally confidential by law. 28 C.F.R. § 20; Gov't Code § 411.083. Criminal history information that has been compiled by a governmental entity is protected by the common-law right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). For your convenience, we have marked the criminal history information to be withheld. (See yellow tags).

Section 552.117(2) excepts from required public disclosure information relating to the home address, home telephone number, and social security number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure, as well as whether the peace officer has family members, regardless of whether the peace officer has made an election under section 552.024 of the Government Code to keep this information confidential. Therefore, the department must withhold all information in the submitted records made confidential by section 552.117(2).

The Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

\* \* \* \*

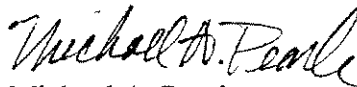
(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

See Act of May 29, 1997, S.B. 1069, § 4, 75<sup>th</sup> Leg., R.S. (to be codified at Gov't Code § 552.130).

The submitted documents contain a photocopy of a Texas driver's license and references to driver's license numbers. The photocopy and driver's license numbers must be withheld from disclosure pursuant to section 552.130.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref: ID# 110834

Enclosures: Marked documents

cc: Mr. Mark Gilliam  
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(w/o enclosures)